

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

NIGEL LEE WHITTAKER,

Petitioner,

v.

Case Number: 2:10-cv-11051
Honorable Denise Page Hood

MICHAEL CURLEY,

Respondent.

_____/

ORDER DENYING PETITIONER'S MOTION FOR DEFAULT JUDGMENT

Petitioner Nigel Lee Whittaker, a state inmate, presently incarcerated by the Michigan Department of Corrections at the Baraga Maximum Correctional Facility in Baraga, Michigan, filed a *pro se* petition for writ of habeas corpus under 28 U.S.C. § 2254. Pending before the Court is his "Motion for Default Judgment." (Dkt. # 15.)

Petitioner seeks a default judgment because Respondent failed to timely answer his petition and file the necessary Rule 5 materials. Petitioner is correct. However, on February 7, 2012, the Court issued an order, ordering Respondent to file an answer to Petitioner's petition by March 8, 2012. Respondent therefore has until then in which to comply with the Court's order. Furthermore, a default judgment is generally unavailable in a habeas-corpus proceeding on the ground that government officials failed to file a timely response to the petition. See, e.g., *Allen v. Perini*, 424 F.2d 134, 138 (6th Cir. 1970).

Accordingly,

IT IS ORDERED that Petitioner's motion is DENIED. (Dkt. # 15.)

SO ORDERED.

s/Denise Page Hood
United States District Judge

Dated: February 24, 2012

I hereby certify that a copy of the foregoing document was served upon Nigel Whittaker #375383, 13924 Wadaga Road, Baraga, MI 49908 and counsel of record on February 24, 2012, by electronic and/or ordinary mail.

s/LaShawn R. Saulsberry
Case Manager